UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NEW BEGINNINGS HEALTHCARE FOR WOMEN, LLC,

*Plaintiff,*

v.

EVO PAYMENTS INTERNATIONAL, LLC et al,

*Defendants.*

Docket 17-cv-03650-JFB-SIL

United States Courthouse
Central Islip, New York

August 31, 2017
1:08:43 p.m. - 1:44:06 p.m.

TRANSCRIPT FOR CIVIL CAUSE
- TELEPHONIC CONFERENCE FOR ORAL RULING ON MOTION TO DISMISS AND MOTION TO STRIKE THE CLASS ALLEGATIONS -
BEFORE THE HONORABLE JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

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*(Proceedings recorded by electronic sound recording)*

COURTROOM DEPUTY: Civil cause for a telephone conference in Civil 17-3650, *New Beginnings Health Care for Women v. EVO Payments*. Counsel, please state your appearances for the record.

MR. WEBB: Adam Webb for Plaintiff. For the Defendant, you have David Balser and John Chally.

THE COURT: Okay. Good afternoon, everybody. This is Judge Bianco. As you know, I scheduled the conference because I wanted to place the Court's oral ruling on the record with respect to the pending motion to dismiss, and to the strike the class allegations. What I intend to do is to place a fairly detailed oral ruling on the record. It will probably take about 20 minutes or so to do that. We're recording this, so if you want to order a copy of the transcript of this ruling you could do so through the clerk's office. It's also possible at some future time, I might issue a written opinion. I haven't decided whether to do that or not. It wouldn't be in the immediate future, but there's a good chance that this will simply be the ruling of the Court. And obviously, I'll answer any questions when I'm done.

For reasons I'm going to explain in detail in a moment, I'm granting the motion with respect to only Counts 1 and 2, and I'm denying the motion to dismiss with respect to the remaining counts. I'm also denying the motion to strike the class allegations at this juncture of the case.

First, with respect to the motion to dismiss, the standard of review is well-settled. I'm not going to belabor the record by setting it forth in any great detail. I adopt the standard of review in its entirety as set forth in one of my prior opinions, *Harbor Distributing Corp. v. GTE Operations Support Incorporated*, 2016 WL 1228615 at *3 (E.D.N.Y. March 28, 2016). In particular, I note under that standard, I have to accept the factual allegations set forth in the complaint as true, I have to draw all reasonable inferences in the Plaintiff's favor, and then determine whether a plausible claim exists under the Iqbal-Twombly standard as pronounced by the Supreme Court. Both sides also agree that on a motion to dismiss, the Court may consider any documents that are attached, referred to, or integral to the complaint. In this case, obviously, that would include the contract that is the subject of dispute. That's *Chambers v. Time Warner Inc.*, 282, F.3d 147, 152 (2d Cir. 2002).

I'm going to give a brief summary of the allegations as set forth in the amended complaint before moving to each count. As set forth in the amended complaint, the Plaintiff alleges that in early May 2015, Plaintiff discussed switching to EVO for payment processing services, and the parties preliminarily agreed on the fees and charges Plaintiff would pay in the event Plaintiff decided to switch. That's Paragraph 24. EVO subsequently faxed a two-page merchant application, which

I'll refer to as the Agreement, to Plaintiff on May 14, 2015. That's Paragraph 26. The pricing information matched the terms to which the parties had preliminarily agreed. Paragraph 27. On May 18, 2015, Plaintiff's representative signed the Agreement and faxed a copy to EVO. Paragraph 28.

The Agreement included some detailed pricing information on the fees EVO would charge Plaintiff for its processing services. That's at Page 2 of the Agreement. Furthermore, on its first page, it states that "a Visa member must be a principal (signer to the merchant agreement). At the bottom of the second page above the signature line, there's a clause stating that "Merchant understands that this Agreement shall not effect until merchant has been approved by a bank, and a merchant number is issued." Just below that clause and immediately above Plaintiff signature is another clause that states "If merchant submit a transaction hereunder, merchant will be deemed to have accepted the terms and conditions of the merchant processing agreement." The signature block that follows this statement put spaces for signatures by EVO and Deutsche Bank. Neither signs it however. And Plaintiff alleges that it is EVO's standard practice to avoid signing merchant agreements. That's Paragraph 37 of the complaint.

Shortly after Plaintiff signed the Agreement, it began submitting transactions to EVO. That's Paragraph 39. Plaintiff eventually noticed "numerous improper charges" listed on its

account statements. That's Paragraph 40. These included fees that it alleges it never agreed to pay, such as shipping fees, non-PCI fees, a PCI compliance fee, and an IRS reporting fee. As well as unauthorized increases to fees it had agreed to pay. That's Paragraphs 40 through 45.

EVO deducted these fees automatically before Plaintiff received its monthly statement. That's Paragraph 42. On separate occasions, Plaintiff complained of the improper fees and EVO would refund them. Paragraph 43. Over a year after signing this Agreement, Plaintiff terminated its account with EVO in July 2016. That's Paragraph 44.

Now, moving to an analysis of the particular claims. First is the threshold matter. The parties disagree as to whether Georgia or Pennsylvania law governs this case. The Second Circuit has stated, however, "Choice of law does not matter, unless the laws of the competing jurisdictions are actually in conflict." *International Business Machines Corporation v. Liberty Mutual Insurance Company*, 363 F.3d 137, 143 (2d Cir. 2004).

Having analyzed both Georgia or Pennsylvania law, I find no meaningful conflict between Georgia and Pennsylvania law on the basic contract principles that are at issue before the Court today. Therefore, in this decision, I provide primarily Georgia law for purposes of the motion. However, I also provide some citations to Pennsylvania law, again, just to demonstrate

that there was no meaningful difference with respect to the legal principles that the Court is analyzing today.

I'm now going to address the issue regarding the flexibility of the Agreement. The complaint alleges that the Agreement is not enforceable because no EVO representative signed it. And by its terms, the Agreement, according to Plaintiff, requires a countersignature. EVO disagrees with Plaintiff's reading of the contract as mandating a countersignature, and argues that Plaintiff's performance rendered the Agreement binding, even if such a signature was required.

Under Georgia law, a party need not sign a contract for it to be enforceable. See *Cochran v. Eason*, 180 S.E.2d 702, 704. (Ga. 1971). "Assent to the terms of a contract may be given other than by signatures." And acceptance can be inferred from performance under the contract." *Valiant Steel and Equipment Inc. v. Roadway Exposition, Inc.*, 421, S.E.2d 773, 776 (Georgia Court of Appeals, 1992).

Pennsylvania has the exact same legal principle as set forth in *Terlescki v. E.I. Dupont de Nemours & Co.*, 1992 WL 211531 at *2 (E.D. Pa. August 24, 1992). "A party need not sign an agreement to be bound by it. So long as it's acting pursuant to its terms, this evidences his agreement." Also, *Grzech v. Unemployment Compensation Board of Review*, 56 Pa. Commonwealth Ct. 9, 423 A.2d 1364 (1981). "An offer, however,

can be accepted by … performance."

Although EVO did not sign the Agreement, the amended complaint's unequivocal terms, clearly alleges that the parties performed under the contract that's contained in several paragraphs, including Paragraphs 39 through 45. Given that concession by the complaint, the Court concludes that this performance renders the contract enforceable, even in the absence of a countersignature. Plaintiff argues that a countersignature was a condition precedent to the Agreement's enforceability, and absent satisfaction of this condition, the parties' performance did not make the Agreement binding.

The Court agrees that it is true under Georgia law that a contract is not enforceable where a condition precedent to it has not been satisfied. See *Brogdon Ex Rel. Cline v. National Healthcare Corp.*, 103 F. Supp. 2d 1322, 1335 - Dist. Court, ND Georgia, 2000. As well as under Pennsylvania law, Acme Markets v. Federal Armored Exp., Inc., 648 A.2d 1218, 1220, 437 Pa. Superior Ct. 41, 437 Pa. … - Pa: Superior …, 1994. Both for the proposition that condition precedent is one which is to be performed before any right to be created therefore accrues. (Quoting other cases.)

In my view, in this particular case, however, the Agreement's language does not make Defendant's countersignature a condition precedent in general. Georgia disfavors conditions precedent, and therefore, "a contractual provision is

interpreted as a condition precedent only if it is clear that the parties intended it to operate that way." *Williams Service Group, LLC v. National Union Fire Ins. Co. of Pittsburgh*, 495 Fed. Appx. 1, 5 (11th Cir. 2012). As well as *Allentown Patriots, Inc. v. City of Allentown*, 162 A. 3d 187, 1195 Pa. Commonwealth Ct. (2017). "In general, conditions precedent is highly disfavored and will be strictly construed against the one seeking to avail himself of them."

This high standard is met by using specific language, such as -- and I'm now quoting from a Georgia case -- "on condition that or if or provided or by explicit statements that certain events are being construed as conditions precedent. That comes from *Choate Construction Co. v. Ideal Electrical Contractors, Inc.*, 246 Ga Appeals Court 626, 629 (2000). In the instant case that Plaintiff cites to support its argument, neither uses this type of language or otherwise makes clear in any way that a countersignature is required as a condition precedent to enforceability. Specifically, Plaintiff argues that two clauses render EVO's countersignature condition precedent to the Agreement. The first clause states that a Visa member, here Deutsche Bank, must be principal signer (to the merchant agreement). The second states that this Agreement shall not take effect until merchant has been approved by a bank and a merchant number is issued.

In the Court's view, neither of these uses of language

are typical or indicate a condition precedent. See *Fulton County v. Collum Properties* - 193 Ga. App. 774, 388 S.E.2d 916, 916 Ga. App. (1998). Holding that the clause lacked language of a condition precedent. Did not create one. As well as the *Williams* case cited earlier. 495 Fed. Appx. 3, reaching the same conclusion. The second clause is use of the term "until arguably could be construed as a condition precedent. But by its terms that clause only requires the bank to approve of the merchant and issue a merchant number. It does not state that approval must be demonstrated via signature.

Furthermore, other language in the Agreement. The Court has reviewed the Agreement, there is no language that expressly conditions enforcement on a countersignature. Other courts in similar circumstances have reached the same conclusion, including *Harris v. City Mortgage Inc.*, 2014 WL 1767717 at *4, ND Georgia, May 2, 2014. In the absence of such language in this case, the presence of a signature block for EVO is not sufficient for this Court to conclude a signature on its behalf was a condition precedent to enforceability. (Id at *4, n.3.) See also, under Pennsylvania law, *In re NuNET Inc.*, 48 B.R. 300, 310 (E.D. Pa. 2006). "The mere presence of signature lines does not determine whether the parties intended to be bound only upon the execution of the document by all signatories."

Moreover, the Agreement indicates that the parties

contemplated that performance alone could be binding, because just above the signature line, it states that "If merchant submits a transaction hereunder, merchant will be deemed to have accepted the terms and conditions of the merchant processing agreement." In light of this language and the context of the entire Agreement, disfavor is shown towards condition precedence under Georgia law, as well as Pennsylvania law, and the absence of the language clearly signaling a condition precedence, I conclude, as a matter of law, that the Agreement did not require EVO's signature as a condition precedent to enforceability.

I just note that I did review the case cited by Plaintiff that was invoked at oral argument, Liberty Salad Inc. v. Groundhog Enterprises, Inc., 2017 WL 2903154 (E.D. Pa. July 7, 2017). I don't believe it is persuasive in this case. In that case, the clause in the merchant processing agreement said "By signing below, Merchant and the Undersigned agree, acknowledge and understand that." And then it goes on to say "The Agreement will not take effect unless and until Merchant has been approved by Bank and IPayment, and Merchant is assigned and issued a Merchant Account Number." And there's additional language. Specifically, this clause differs in my view from the Agreement. In this case, it expressly indicates that both parties must sign in any event, even if there's disagreement over whether that difference was material to the decision. To the extent, the court in Liberty Salad was interpreting the

language regarding approval and assignment of an account number as also requiring a signature on the merchant application, I simply respectfully disagree with that interpretation. Because as I noted, under both Pennsylvania and Georgia, the Defendant is permitted to manifest approval of the contract without necessarily signing it. See *Terlescki*, 1992 WL 211531 at *2, *Cochran*, 180 S.E.2d 704. Georgia law is absolutely clear that contract language must be unambiguous to create a condition precedent. See *Williams*, 495 Fed. Appx. 3.

In sum, as relates to this issue, I find that the Defendant's signature was not a condition precedent to enforceability, and therefore, the parties' alleged performance set forth in the complaint made the Agreement enforceable in the absence of such a signature. See *Valiant Steel*, 421 S.E.2d 776. Accordingly, based upon that ruling, I'm granting Defendant's motion on Count 1, which the Plaintiffs seek a declaration that the Agreement is unenforceable because of the absence of a signature. As well as I'm granting on Count 2, which asserts a claim for unjust enrichment. That turns, again, on the unenforceability of the Agreement because of the absence of the signature. See *Camp Creek Hospitality Inns, Inc. v. Sheraton Franchise Corporation*, 139 F. 3d 1396, 1413 - Court of Appeals, 11th Circuit 1998, which makes clear that recovery of the theory of unjust enrichment is only available when as a matter of fact there is no legal contract.

I am now turning to Count 4 of the Amended Complaint, the breach of contract claim, which I find sufficiently asserts a plausible breach of contract claim, including breach of the implied covenant of good faith and fair dealing. I find that it's a plausible claim that survives a motion to dismiss.

With respect to the breach of contract, EVO initially argued that -- just give me one second.

(Pause.)

With respect to the breach of contract claim, EVO initially argued that it fails to state a claim, because it did not identify the specific contractual provision that had allegedly been violated. I disagree. When you read that claim in its entirety, it makes clear that the breach of contract claims are based on Defendant's imposition of some fees that were not identified in the Agreement. So, in other words, the argument is that there's an absence of contractual provisions that would allow them to impose those additional fees. And in addition, it's also alleged that other fees exceeded the amount set forth in the Agreement. So, they clearly articulate why this would be a plausible breach of contract under the provisions.

For example, Paragraph 40(b) states that Defendant charged Plaintiff a shipping fee that Plaintiff never agreed to pay. Although the following allegations as to the non-PCI fees, a PCI compliance fee, and an IRS reporting fee do not

specifically state that Plaintiff did not agree to pay those fees. Paragraph 64 clarifies that these fees set forth in Paragraph 40 are identified anywhere in the merchant application, and thus, are unauthorized, and would constitute therefore a breach.

Likewise, Paragraph 115 indicates that the Defendant violated the contract by assessing improper charges not provided for in the contract. Paragraph 40(a), meanwhile alleges that Defendant charged Plaintiff a rate that exceeded the published NABU fee rate at all times in violation of the Agreement that states that all transactions will be assessed the current publish interchanged rates, dues and assessments, in addition to the basis points from the Agreement before referring merchants to MasterCard's website. That's Agreement at Clause 6.

Therefore, it's clear, based upon the language of the amended complaint, as to what the Plaintiff is alleging how the Defendants allegedly breached the contract in this particular case. See *Deere Construction, LLC v. CEMEX Construction Materials Florida, LLC*, 198 Supp.3d 1332, 1341-42 (S.D. Fla. 2016). In its reply, in that oral argument, EVO argued that the express terms of the Agreement authorized them to impose additional fees, IYD clause, that indicate fees "may vary each month." Some charges may appear as "one-time setup fee." Others "will be added." And then there's additional language. "Under." And then additional language. "Certain

circumstances." And Plaintiff should visit Defendant's website "for additional information about these fees."

In order for the Defendant to prevail on these types of arguments at the motion to dismiss phase, these statutory provisions would have to be clear, unambiguous in their reading in the Defendant's favor. I do not believe that to be the case. At a minimum, these provisions, either taken individually, or in their entirety, in the Court's view, the Plaintiffs have an argument that at a minimum, they're ambiguous if you construe the language most favorably to the Plaintiffs, as the Court must do in this case. So, having concluded that it is not unambiguously set forth in the Defendant's favor, it is not a basis for the motion to dismiss in this case.

First, let me explain why. Again, this is construed most favorably to the Plaintiff. The clause that says fees "may vary each month" and directs Plaintiff to Defendant's website, can be argued to Plaintiffs to be a reference to one specific set of fees, namely the card association fees listed on page 2 of the Agreement at clause 12. In full, that clause relating to those fees reads "Merchant will also be assessed each month the following card association fees, fund network fee and acceptance and licensing fee. These fees, which vary each month, are based on" and then it has "various factors not relevant here. For additional information about ***these fees*** go to" and then it has the Defendant's website. Thus, the Plaintiffs certainly have a

plausible argument. Then in the context of the sentences which reference two of these three provisions on which Defendant relies, could be read to refer to the card association fees specifically.

Plaintiff also has a plausible argument that the one-time setup fee meanwhile only applies to high-speed processing and/or gateway activation. That's in clause 9. And that very detailed "circumstance" the Agreement outlines, again, could plausibly be argued by the Plaintiff, only apply to a specific-type of surcharge identified in clause 4. Thus, the Court concludes that Plaintiff has articulated a plausible claim that the provisions that EVO cites as providing it with broad authority imposed fees, not listed in the Agreement, are limited to the specific kinds of charges, and that they do not afford EVO the type of authority it claims to have to impose the additional fees. Accordingly, because the complaint plausibly alleges that EVO imposed fees not authorized by the Agreement were in excess of the amounts set forth within the Agreement, I find that the Plaintiffs have adequately set forth a claim for breach of contract.

With respect to the implied covenant of good faith and fair dealing, it is true that Georgia law does not recognize a cause of action for breach of the implied covenant of good faith and fair dealing. See *Cohen Financial Group Inc. v. Employers Insurance Company of Wausau*, 476 Fed. Appx. 834, 836 (11th Cir.

2012), as well as under Pennsylvania law, *Frey v. Grumbine's RV*, 2010 WL 4718750, at *11 (M.D. Pa. Nov. 15, 2010). However, I've gone back, I looked at the amended complaint, Count 4 does not assert an independent claim for good faith and fair dealing. In fact, the heading itself, has them together, a breach of contract claim, including a claim for breach of the covenant in good faith and fair dealing. So, I don't believe that this complaint does allege it separately. If it did, it would not be in the cause of action, but I'd construe it as written to be a breach of contract claim that includes that particular allegation, among others. So, I don't believe that's a basis to dismiss Count 4.

Moving to the remaining claims for declaratory judgment, Counts 3 and 5 of the amended complaint; denying the motion to dismiss those at this time. Just for background for a moment. It asserts that the agreement was six pages, not two as alleged by Plaintiff. And that the latter four pages consist of more detailed terms and conditions that also bound Plaintiff. The amended complaint alleges, and I'm accepting this as true for purposes of this motion that the agreement was only two pages, and that Plaintiff never received the terms and conditions. Based upon these allegations, Count 3, seeks a declaration that the terms and conditions are not binding on the Plaintiff. In the alternative, Count 5 seeks a declaration that various provisions of the terms and conditions are invalid on

the grounds that they are, among other things, illusory and unconscionable. That's Paragraphs 123 through 134. EVO moves to dismiss these counts, arguing that the Agreement is no longer in effect, and therefore, Counts 3 and 5 are not recognizable under the Declaratory Judgment Act. Although the Defendant's correct that the Declaratory Judgment Act requires a Plaintiff to allege facts to show that the continuing controversy is real and immediate, and it's a definite, rather than speculative, threat of future injury. Quoting from *AVRA v. Federal Deposit Insurance Corporation*, 2013 WL 12106936 at *11 (ND Ga. January 18, 2015).

I find that such a controversy does exist here because Plaintiff asserts this. And having read the terms and conditions, I think it's plausible that several of the provisions in the agreement or the terms and conditions may affect the Plaintiff's legal rights. For example, and this is just one example; Paragraph 47 in the amended complaint, said that Defendant threatened to enforce several contractual terms in response to Plaintiff's law suit, including (quoting from the amended complaint) "an obligation to make and resolve billing disputes within a certain time-period, a limitation of liability clause, a provision supporting the applied New York law to require all suits to be filed in New York, a class action waiver, and a provision that purported to require Plaintiff to pay EVO's attorney's fees in any billing dispute."

So, to this Court it's clear, that the validity of these terms can still affect the Plaintiff's rights under circumstances of this case, despite determination of the agreement. And therefore, I find that Counts 3 and 5 sufficiently state claims declaratory relief under the standard that I just cited.

Finally, the Court moves to EVO's motion to strike the class claims, which I'm denying. I set forth the relevant law on that type of motion in a case called *Calibuso v. Bank of America*, 893 F.Supp.2d 374, 384 (E.D.N.Y. 2012), and I adopt that by incorporation in its entirety without repeating it here. I just quickly note, in connection with that standard, as I noted in that case, motions to strike are heavily disfavored at this stage because they "pre-emptively terminated the class aspects of litigation solely on the basis of what is alleged in the complaint, before Plaintiffs are permitted to complete discovery to which they would otherwise be entitled on questions relevant to class certification." *Ironforge.com v. Paychex*, 404 (W.D.N.Y. 2010).

Defendant argues that the Court should strike the class allegations because individualized choices of law and factual questions would dominate over class-wide issues. I find that it would be premature to dismiss the class claims on those grounds at this juncture of this case. For example, with respect to the choice of law questions, Paragraph 6(g) of the

terms and conditions, states that any dispute by a merchant, will be governed by New York law. So, in the event the terms and conditions prove binding, there would be no choice law problems for the class. And EVO acknowledges that the choice of law issues only arise if the terms and conditions are not binding. But even if this is true, it's not clear to me that the choice of law issues would make this case inappropriate for class certification.

At this point, at its core, this case involves basic principles of contract law that could be very similar across most jurisdictions as evidenced by the fact, as I've analyzed today, that Georgia and Pennsylvania are virtually identical on all the issues raised in this motion. For any discrepancies that may arise, moreover it may be possible for the Plaintiff or the Court to craft an approach that accounts for them as other courts have done where there have been such conflicts, including in the *In re Checking Account Overdraft litigation*, 307 FRD 630, 652-655 (S.D. Fla. 2015). And in that same case, another opinion that did so is 275 FRD 666, 680 (S.D. Fla. 2011). Therefore, at the very least, I find it's premature to strike the class claims based on potential choice of law issues that may arise in the future.

I reach the same conclusion with the Defendant's argument about individualized factual issues. Defendant contends that its negotiation with each member, the pricing and

fees are agreed upon, whether the terms and conditions were provided to each member and received, each member's compliance with the agreement, the fees charged and damages, all involve highly individualized factual inquiries into EVO's relations with each individual class member.

However, the amended complaint alleges several factual questions that may be sufficient to establish the commonality and (inaudible) requirements of Rule 23. For example, Plaintiff alleges that it was Defendant's common practice not to provide the terms and conditions to prospective clients. That's Paragraph 60 and 85(e). So, for example, if discovery showed that it was the practice never to send these to any clients, there certainly wouldn't be any individualized determinations on that fact. And they also allege similarly that it was a common practice to charge the excessive and unauthorized fees, suggesting that they were charged to every member of the class. That's Paragraphs 74, 75 and 85(g).

I believe this is enough to survive a motion to strike at this preliminary stage of the case. Therefore, because EVO's arguments against class certification are premature, I'm denying the motion to strike at this time. So, in sum, I'm granting the motion to dismiss Counts 1 and 2 because they are predicated on the assumption that the Agreement needed to be countersigned, which the Court has found is incorrect, that no countersignature was required, and the party's performance rendered the agreement

enforceable. I'm denying the motion to dismiss in all other respects, and I'm denying the motion to strike. All right? So, do you want to propose a date for the answer, Mr. Balser?

MR. CHALLY: This is Mr. Chally. I'm happy to.

THE COURT: Okay.

MR. CHALLY: We should be able to answer within the two weeks that the rules would require. So, we will plan to answer on the 15th of September if that's okay with the Court.

THE COURT: Sure. You said the 15th?

MR. CHALLY: Yes, sir.

THE COURT: Yes. That's certainly acceptable. And then obviously, the Magistrate Judge will take over the supervision of discovery in the case. All right?

MR. CHALLY: Thank you.

THE COURT: Any other issues for today? Anything from you, Mr. Webb?

MR. WEBB: Your Honor, I'm just -- please tell me to shut up if this is inappropriate, but I want to just give you a heads-up. We did file a case, which I know the Court is aware of, in the same court, and it is announced as a related case by a couple of other small businesses against EVO. And it is before still Judge Azrack. And I just wanted to notify you of that. I think you're already aware of, but I would have thought it would have been forwarded to you just on a standard of related cases and efficiencies of the court; not trying to do

anything with that at this time, but I did want to use this opportunity to just alert you to that.

THE COURT: Yes. I did see the -- there was a notification on my docket of the related case, and I did note that. But what I would suggest you do would be, if you believe that that case should be transferred under that rule to me, I would write a letter to Judge Azrack. Obviously, you should speak to your opposing counsel in that case, and see if they agree that it should be transferred. And then write a letter to Judge Azrack, and that would usually then trigger a discussion between our chambers as to whether or not it should be done. But we usually want to see whether or not there's any disagreement on whether or not they're related or not. Okay?

MR. WEBB: Thank you.

THE COURT: All right. Anything else from Defendant's counsel?

MR. CHALLY: No, Your Honor. Thank you very much.

THE COURT: All right. Thank you. Have a good day.

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CERTIFICATION

I, Rochelle V. Grant, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: September 8, 2017

Rochelle V. Grant